pany, if there was a dangerous practice of the kind alleged, and the company had notice of it, to take such steps as were necessary and appropriate to inform the department of any breach of its contract, and the violation of the department's rules which resulted in danger to passengers, and to take such further steps as were necessary to prevent the continuance of the practice."

Usury—Recovery of Reasonable Value.—In Roth & Miller *v.* Temkin, in the Supreme Court of New Jersey, 100 Atl. 843, it was held, according to the syllabus by the court, that "a broker who procures a loan of money for his principal, under the express contract of the later to pay him a greater compensation than that allowed by section 5 of the Usury Act (4 Comp. St. 1910, p. 5706), may, notwithstanding such void contract, recover the reasonable value of his services, not exceeding the statutory rate." The New Jersey statute above cited is as follows:

"That every solicitor, scrivener, broker, or driver of bargains, who shall directly or indirectly, take or receive more than the rate or value of fifty cents for brokerage, or soliciting or procuring the loan or forbearance of one hundred dollars for a year, and so in proportion for a greater or less sum, or for a longer or shorter time, or above twenty-five cents for drawing, making or renewing the bond or bill for such loan or forbearance, or for any counter-bond or bill concerning the same, shall, for every such offense, forfeit sixteen dollars, to be recovered by action of debt, with costs, by any person who shall sue for the same; the one moiety to the prosecutor, and the other to the state."

The court said in part: "The penalty for the violation of this provision is not a forfeiture, as in the historic Usury Act, but a specific penalty, to be recovered in a qui tam action. The contract is unlaw ul in the sense that it is law nonexistent and hence unenforcible; but such illegality does not relate to the services themselves, so as to render them immoral, or incapable of being made a basis of recovery independently of the void express contract. It is this feature that distinguishes usury statutes from contracts that call for the doing of that which is immoral or reprobated on grounds of public policy, in which case the courts are closed to the parties in pursuance of a judicial policy that thus purposely penalizes the participants in such immoral and illicit transactions; but where the sole illegality in a contract, otherwise lawful and moral, is that it calls for a compensation that is not allowed by statute, the courts have no judicial policy other than that of seeing that the statute is observed and that such penalties or forfeitures as the legislature has provided are enforced. The statute contains a prohibition and a penalty, each of which in an appropriate action the courts will enforce; the statute contains no forfeiture, and presents no occasion for the construction of one by judicial policy.

"This was the view taken of a similar statute by the Appellate Division of the Supreme Court of New York in a case that arose out of a written agreement to pay a stipulated sum for certain services looking to the setting aside of the will of Samuel J. Tilden, in connection with which the plaintiff claimed that he had procured for the defendant a loan of $30,000.

"The agreement being in evidence, and the Usury Act being substantially similar to ours, a motion to nonsuit was made at the trial upon the grounds urged in the present case. In denying this motion the trial court said:

"'I decide that the plaintiff cannot maintain an action upon that paper; but, inasmuch as it is the right of this plaintiff to recover against this defendant for services which he has rendered at his request, he may go to the jury upon that theory, and recover what the jury shall say his services were worth, provided the jury will find that the defendant employed him to render the services.'

"Upon appeal, Cullen, J., said: 'There is no provision in the statute rendering a contract or agreement to pay a greater compensation than that prescribed wholly void. One who renders services as a broker under an agreement to pay a higher compensation is entitled to receive pay for his services, but he cannot recover any more than the statutory compensation. * * * As the statute merely prescribes the rate of compensation, but does not defeat the action, it was unnecessary for the defendant to plead the statute. * * * No recovery could be had against the defendant for the alleged breach of his written agreement. We do not see why the plaintiff was not entitled (if the jury found the facts in his favor) to recover for his services at the statutory rate.' (Buchanan *v.* Tilden, 18 App. Div. 123, 45 N. Y. Supp. 417).

"The view thus illustrated seems to us to be both in theory and in practice preferable to the opposite view, which makes a gratuity of services rendered to one who expected to pay for them merely because he agreed to pay for them more than the plaintiff was legally entitled to receive. This is both harsh and illogical. The rendition and acceptance of the services gave a complete right of action, subject to the statutory limitation as to the amount to be recovered, which cannot be exceeded by the making of an express agreement on which an action could not be maintained. Such a contract being void leaves the right of action that was entirely independent of such contract unaffected by anything in the statute which expressly provides a penalty that is utterly inconsistent with the forfeiture of all right of recovery upon a perfectly valid right of action."

Bills and Notes—Negotiability—Certainty of Sum to Be Paid.—In Coolidge & McClaine *v.* Saltmarsh, in the Supreme Court of Washington (June, 1917, 165 Pac. 508), it was held that under the provision of the Negotiable Instruments Law (Rem. Code, § 3392), declaring